

IN THE UNITED DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

JANICE MORGAN, BARBARA)
RICHARDSON, CORA CANNON,)
LAURIE R. TROUT (WILSON))
on behalf of themselves)
and all others similarly situated,)
)
Plaintiffs,)
)
vs.) CIVIL ACTION NUMBER:
) CV-01-C-0303-W
)
)
FAMILY DOLLAR STORES, INC.,)
)
Defendants.)

**PLAINTIFFS' RENEWED MOTION
FOR ATTORNEYS' FEES AND EXPENSES**

Come now the plaintiffs, and move the Court for an award of attorneys' fees and expenses pursuant to 29 U.S.C. Section 216(b). As grounds, plaintiffs state the following:

1. The Court originally entered judgment for the plaintiffs on March 31, 2006. Dkt. #592.
2. Subsequent to the Court's entry of judgment, the plaintiffs filed a Bill of Costs (Dkt. #665) and Motion for Attorneys' Fees and Expenses (Dkt. #656).
3. The Court denied plaintiffs' Motion without prejudice "to its reinstatement

upon the final resolution of the merits of this case" in "recognition of the reality that either the United States Court of Appeals for the Eleventh Circuit or the United States Supreme Court will ultimately decide whether the Plaintiffs have prevailed in this action" and "in the interest of judicial economy." Dkt. #672.

4. The Court entered an amended final judgment for the plaintiffs on April 16, 2007, in the amount of \$35,576,059.48, for defendant's violation of the Fair Labor Standards Act. Dkt. #708.
5. The Eleventh Circuit issued a Memorandum Opinion and Order affirming the Court's judgment on December 22, 2008. *See Morgan v. Family Dollar Stores, Inc.*, 551 F.3d 1233 (11th Cir. 2008).
6. The plaintiffs moved for the attorneys' fees and expenses incurred during the appeal of this case, and the Eleventh Circuit granted plaintiffs' Motion because they were prevailing parties. However, the Eleventh Circuit remanded to the Court the determination of the amount of fees and expenses that should be awarded to plaintiffs.
7. Subsequently, the defendant petitioned the United States Supreme Court for a writ of certiorari to review the Eleventh Circuit's decision. The Supreme Court denied the defendant's petition on October 5, 2009.

8. Section 216(b) of the Fair Labor Standards Act provides that “[t]he court . . . shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney’s fee to be paid by the defendant, and costs of the action.” 29 U.S.C. §216(b).
9. Based upon the hours expended in the case, the hourly rates appropriate for the attorneys and paralegals involved, and the application of the standards set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974) and *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711 (1987), plaintiffs request an award of attorneys’ fees and expenses in the amount of \$10,782,000. *See e.g. Dowdell v. City of Apopka, Fla*, 698 F.2d 1181, 1190 (11th Cir. 1983).
10. Plaintiffs further seek an upward adjustment of such lodestar for: (1) the risk of non-payment of a substantial amount of time and expense; (2) the delay in payment; (3) the novel and difficult issues involved; (4) the preclusion of other employment; (5) the undesirability of the case; and (6) the exceptional results obtained.
11. Plaintiffs have filed this Motion to re-initiate the request for an award of attorneys’ fees and expenses. The parties previously agreed to submit an appropriate briefing schedule with the Court regarding this Motion after the

Supreme Court's resolution of the defendant's petition for a writ of certiorari.

WHEREFORE, plaintiffs request entry of judgment awarding attorneys' fees and expenses in the amount of \$10,782,000, together with an upward adjustment of one hundred percent for risk, delay, novelty, difficulty, undesirability, exceptional results and preclusion of other employment.

Respectfully submitted,

/s/ Herman N. Johnson, Jr.

Robert L. Wiggins, Jr.

Robert F. Childs, Jr.

C. Michael Quinn

Gregory O. Wiggins

Herman N. Johnson, Jr.

Kevin W. Jent

Counsel for the Plaintiffs

OF COUNSEL:

Wiggins, Childs, Quinn & Pantazis, LLC

The Kress Building

301 Nineteenth Street North

Birmingham, Alabama 35203

205/314-0500

J. Allen Schreiber

P. Mark Petro

OF COUNSEL:

SCHREIBER & PETRO, P.C.

Suite 250, 2 Metroplex Drive

Birmingham, Alabama 35209

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

James Walker May
Jay D. St. Clair
T. Matthew Miller
Abdul K. Kallon
Ronald H. Kent
Stacey T. Bradford
BRADLEY, ARANT, ROSE & WHITE, LLP
One Federal Place, 1819 5th Avenue North
Birmingham, Alabama 35203

Daniel D. Sparks
CHRISTIAN & SMALL, LLP
1800 Financial Center
505 20th St. N.
Birmingham, AL 352503

Jeffrey J. Hartley, Esq.
Helmsing Leach Herlong
Mewman & Rouse, PC
Box 2767
Mobile, AL 36652

J. Mark White
Augusta S. Dowd
Attorney at Law
WHITE ARNOLD ANDREWS
& DOWD, P.C.
Suite 600, 2025 3rd Avenue No.
Birmingham, Alabama 35203

W. Dennis Schilling, Esq.
P.O. Box 55147
Birmingham, AL 35255-5147

Stephen C. Olen, Esq.
Olen Nicholas & Copeland, PC
P.O. Box 1826
Mobile, AL 36633

Kevin M. Morris, Esq.
Sparkman, Shepard & Morris, P.O.
P.O. Box 19045
Huntsville, AL 35804

and I hereby certify that I have served by U.S. Mail the foregoing upon the following non-CM/ECF participants:

Theresa M. Bender, Trustee
Post Office Box 14557
Tallahassee, FL 32317

Richard E. Boston, Trustee
27 North Eighth Street
Richmond, IN 47374

Erica Elia Bononi, Trustee 20 North Pennsylvania Ave., Ste. 201 Greensburg, PA 15601	Krispen S. Carroll, Trustee 719 Griswold, Suite 1100 Detroit, MI 48226
Leslie A. Davis, Trustee 9990 Manchester, Suite 202E St. Louis, MO 63122	Camille Hope, Trustee P.O. Box 954 Macon, GA 31202
Randy D. Doub, Trustee P.O. Drawer 8668 Greenville, NC 27835-8668	Kevin R. Huennekens, Trustee Kutak Rock LLP 1111 East Main Street, Suite 800 Richmond, VA 23319-3500
Douglas A. Dymarkowski, Trustee Lydy & Moan, Ltd. 4930 Holland-Sylvania Road Sylvania, OH 43560	Stanley J. Kartchner, Trustee 7090 N. Oracle Road # 178-204 Tucson, AZ 85704
Lawrence G. Frank, Trustee 2023 N. Second Street Harrisburg, PA 17102	Walter W. Kelley, Trustee P.O. Box 70879 Albany, GA 31707
Randall L. Frank, Trustee 310 Davidson Building Bay City, MI 48708	Kevin P. Kubie, Trustee P.O. Box 8928 Pueblo, CO 81008-8928
Linda B. Gore, Trustee P.O. Box 1338 Gadsden, AL 35902-1338	Stephens L. Langeland, Trustee 350 East Michigan Ave., Suite 130 Kalamazoo, MI 49007
Elaine B. Greaves, Trustee National City Bank Building 16 Wick Avenue #801 Youngstown, OH 44503	Bruice A. Lanser, Trustee 205 East Wisconsin Ave., Suite 140 Milwaukee, WI 53202
Clyde Hardesty, Trustee P.O. Box 731 Newark, OH 45058-0731	Dorraine A. Larison, Trustee Gray, Plant, Mooty, Motty & Bennett 1010 West Sain Germain St., Ste 600 St. Cloud, MN 56301

James G. Henderson, Trustee
Pritchard McCall & Jones LLC
800 Financial Center
505 North 20th Street
Birmingham, AL 35203

William Lawrence, Trustee
200 S. 7th Street, Suite 310
Legal Arts Bldg.
Louisville, KY 40202

Joel T. Marker
McKay, Burton & Thurman
170 South Main Street #800
Salt Lake City, UT 84101

Deborah C. Menotte, Trustee
P.O. Box 211087
West Palm Beach, FL 33421

Debra Miller, Trustee
P.O. Box 11550
South Bend, IN 46634

Carla Musselman, Trustee
1619 Druid Road
Maitland, FL 32751

Bernard J. Natale, Trustee
6833 Stalter Drive, Suite 201
Rockford, IL 61108

Edward J. Nazar, Trustee
245 North Waco, Suite 402
Wichita, KS 67202-1117

Donald R. Lassman, Trustee
P.O. Box 920385
Needham, MA 02492

Steven R. Neuner, Trustee
Willow Ridge Executive Office Park
750 Route 73 South, Suite 210
Marlton, NJ 08053

Bradley J. Patten, Trustee
301 Green Street, Suite 200
P.O. Box 1098
Gainesville, GA 30501

Joanne Paulino, Trustee
P.O. Box 24213
Cleveland, OH 44701-4213

John J. Petr, Trustee
111 Monument Circle, Suite 900
Indianapolis, IN 46204-5125

Richard Ramsey, Trustee
124 Capitol, Suite 1400
Little Rock, AR 72201

Christopher J. Redmond, Trustee
One Hallbrook Place, Suite 350
11150 Overbrook Road
Leawood, KS 66211-2298

Dianne G. Reed, Trustee
604 Water Street
Waxahachie, TX 75165

Michael J. O'Connor, Trustee
O'Connor O'Connor Bresee & First
20 Corporate Woods Blvd
Albany, NY 12211

Marion A. Olson, Jr., Trustee
1020 NE Loop 410, Suite 800
San Antonio, TX 78209

Randolph N. Osherow
342 West Woodlawn, Street 300
San Antonio, TX 78212

Barbara B. Stalzer, Trustee
555 Sun Valley, Drive, Suite N-4
Roswell, GA 30076

Janice E. Stanton, Trustee
104 West 9th Street, Suite 303
Kansas City, MO 64015

Cecil M. Tipton, Jr., Trustee
P.O. Box 191
Opelika, AL 36801-0191

Joy R. Webster, Trustee
P.O. Box 1098
Macon, GA 31202

Frederick S. Wetzel, III, Trustee
1500 Riverfront Drive, Suite 104
Little Rock, AR 72202-1749

John H. Ring, III, Trustee
383 Cleveland Drive
Cheektowaga, NY 14215

Kenneth P. Silverman, Trustee
Silverman Perlstein & Acampora LLP
100 Jericho Quadrangle, Suite 300
Jericho, NY 11753

Henry J. Applewhite, Trustee
P.O. Box 724
Aberdeen, MS 39730

John R. Stoebner, Trustee
One Financial Plaza, Suite 2500
120 South 6th Street
Minneapolis, MN 55447

John C. Bircher, III, Trustee
Hunter Bircher, LLP
P.O. Box 567
New Bern, NC 28563

Michael T. Tabor, Trustee
203 S. Shannon
Jackson, TN 38301

Max R. Tarbox, Trustee
1722 Broadway
Lubbock, TX 79401

/s/ Herman N. Johnson, Jr.
OF COUNSEL